## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

HARCO NATIONAL INSURANCE	)
COMPANY	)
Plaintiff,	)
v.	) Case No.: 4:22-CV-307
JF ENTERPRISES, LLC and JEREMY FRANKLIN MITSUBISHI,	) )
JEKENT TRANKEN WITSCHISTI,	)
Defendants.	, )

## **DEFENDANTS' MOTION TO DISMISS**

COMES NOW, Defendants, by and through counsel, and file this motion to ask the Court to dismiss or stay Plaintiff's declaratory judgment action. In support of this motion, the Defendants state:

- 1. In both Counts I and II, Plaintiff asks this court to declare that its insurance policy does not provide coverage for Defendants because Defendants violated numerous policy provisions.
- 2. The Court can dismiss or stay Plaintiff's claim for declaratory judgment relief in both counts because Plaintiff will have an opportunity to raise these issues and claims in a state court proceeding.
  - a. In this case, Judge Robert Schieber entered an Arbitration Award in favor of the James Brost (Brost) and against Defendants on July 6, 2022.
  - Brost then filed a state court action to confirm the Arbitration Award in Missouri State Court on July 7, 2022, in case number 2216-CV15000.

- c. The motion to confirm the Arbitration Award is unopposed.
- d. Once judgment is entered, Brost will file an equitable garnishment in state court.
- e. At that point, Plaintiff will have an opportunity to raise its policy defenses in that state court proceeding.
- f. The courts in the Eighth Circuit routinely dismiss or stay declaratory judgment actions after the judgment creditor files an equitable garnishment proceeding.
- 3. Defendants have filed suggestions in support of this motion that they incorporate into it.
- 4. Defendants, therefore, ask that this Court to dismiss or stay Plaintiff's declaratory judgment action.

Respectfully submitted,

/s/ Tim E. Dollar

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## **CERTIFICATE OF SERVICE**

I hereby certify that on this 8 <sup>th</sup> day of July 2022, I electronically filed the foregoing with
the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel
of record.
/s/ Tim Dollar
Attorney for Defendants